IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.376/2007.

Shri. Mohidin M. Sangam,
H.No.229, Old Power House,
Baina Chota Bazar,
Vasco-Da-Gama, Goa. .. Petitioner.

Versus

1. Union of India,
through the Secretary Government
of India, Ministry of Labour and
Employment Shram Shakti Bhavan,
Rafi Marg, New Delhi - 110001.

2. M/s. Bharat Petroleum Corporation
Limited, (AVN STN) Chicalim,
Vasco-Da-Gama, Goa. .. Respondents.

Mr. Hrudaynath Shirodkar, Advocate for the petitioner.
Mr. J. Vaz, Central Govt. Standing Counsel for the respondent No.1.
Mr. G. K.Sardesai, Advocate for the respondent No.2.

Coram :- F. I. REBELLO &
N.A.BRITTO,JJ.
Date : - 22nd November,2007.

ORAL JUDGMENT :(PER.. F. I. REBELLO,J.)

1. Rule. Heard forthwith. The petitioner has moved this Court to impugn the communication of 4th September, 2006 whereby the Central Govt as the appropriate Govt has rejected the reference sought for by the petitioner in the manner of his status as workman employed with Respondent No.2. It is the case of the petitioner that he was employed by Respondent No.2 as driver-cum-operator since from 1999

and since then he was in continuous service till the time of his termination. Initially, the petitioner was receiving his payments of fixed monthly amount directly from respondent No.2. The petitioner's case is that subsequently to deprive him of his regular benefits after few years, Respondent No.2 through camouflage arrangement engaged the petitioner through a Contractor i.e. Trust Us Security Service without the knowledge of the petitioner. It is further case of the petitioner that he does not know to read, write and/or to understand English though he signs in English language. On 1.8.2005, it is the petitioner's case that the Station In-charge Respondent No.2 asked workman not to join the duty and thereafter, he was not allowed to join the duty which results in refusal of work and ultimately resulted in his termination without complying with the requirements of law and consequently, said termination is illegal.

The petitioner aggrieved by the action of the respondent No.2 raised industrial dispute through Gomantak Majdoor Sangh by letter dated. 14.8.2005 calling on Commissioner, Labour and Employment, Government of Goa to intervene in the matter of his illegal termination. The Conciliation proceedings were commenced. The proceeding ended in failure on account of according to the petitioner the adamant attitude of Respondent No.2. The Conciliation Officer forwarded its failure report to the Government.

The failure report made available to the petitioner is only in the nature of communication as to what had transpired. The real failure report which the Conciliation Officer normally forwards to the appropriate Govt, has not been made available to the petitioner or to the employer. Subsequent to the failure report, petitioner received communication dated. 4.9.2006 giving the reasons for not referring the

matter to the Industrial Tribunal. The letter read as under :

> "I am directed to refer to the failure of conciliation No.VA-8(5)/05-06 dated 28.2.2006 from the ALC(Goa) received in this Ministry on 13.4.2006 on the above mentioned subject and to say that prima facie, this Ministry does not consider this dispute fit for adjudication for the following reasons."
>
> "The Union could not produce documentary evidence in support of their contention that the workman was employed by M/s.BPCL"

On 25.11.2006, the Union wrote back Secretary, Ministry of Labour pointing out that factually the reasons given that Union has not produced documentary evidence, it was incorrect as two documents have been produced which were prima facie evidence that petitioner was workman. In response to that letter by communication dated 13.12.2006, the Union was once again informed that the representation has been examined and rejected as no new facts are brought out.

2. The petitioner aggrieved by his rejection, preferred this petition.

A reply has been filed on behalf of respondent No.2. The Respondent No.2 it is stated was appointed as operation assistance for a period of one year. The first contract was entered into on 1.1.2001 for the period of one year till 3.12.2001 on a payment of a consolidated amount of Rs.34,800/- p.a. and after expiry of the said contract, a fresh contract was entered into by Respondent No.2 with the petitioner for further period of one year from 1.1.2002 to 31.12.2002 on consolidated amount of Rs.38,400/- p.a. On the expiry of contracts, the terms was extended for the period of 3 months till March 2003. It is set out that

that on the expiry of said period of contract, the petitioner joined another contractor of Respondent No.2, 'Trust Us Security Service' from April 2003 and continued the employment in July 2005. It is their case that the petitioner repeatedly stopped attending the duties at even Trust Us Security Service. These facts it is stated,would reveal that the petitioner was not employed by Respondent No.2. In these circumstances, the issue of entry pass by the Port Authorities, cannot lead to the inference that there is employer and employee relationship. It is not necessary to address to the other facts which are set out on record.

3. There can be no dispute that it is open to the appropriate Govt to refuse to make a reference but in doing so, it must record its reasons. In the instant case, the reason given is that the petitioner had not shown any documentary evidence to prima facie show that he is a workman. The petitioner in fact had produced two documents.

The question is, whether the reasons given by the appropriate govt in refusing to make reference can be sustained. It is not the case of the appropriate Govt that documentary evidence produced does not establish that the petitioner is a workman. On the contrary, the reason given is that the Union could not produce documentary evidence in support of their contention. Factually that appears to be incorrect. Apart from that by communication dated 25.11.2006 the Union had drawn the attention of the Secretary, Ministry of Labour after the communication of rejection of reference that documents in support had been produced. Cognizance was also not taken of this document and the representation was rejected.

On behalf of respondent No.1 learned Counsel fairly

submit that he cannot support the order.

In our opinion, the reason given is perverse in as much as the petitioner had produced the documentary evidence. It is not for us to consider the sufficiency or otherwise of the said evidence and whether it establishes prima facie that the petitioner is a workman. It is settled law that while exercising the power U/s.10(1) of the Act, the function of the appropriate Govt is administrative function and not judicial or quasi-judicial function. In performing administrative function, the Govt cannot delve into the merits of the dispute and take upon itself the determination of the lis which would certainly be in excess of the power conferred on it by Section 10 of the Act. See, of Telco Convoy Drivers Mazdoor Sangh V. State of Bihar, AIR 1989, S.C.1565.

In the light of above, we are clearly of the opinion that the reasons for rejection being unsustainable the communication cannot be sustained. The impugned communication dated 4.9.2006 and the subsequent communication dated.13.12.2006 are quashed and set aside and the matter is referred back to the respondent No.1 to reconsider and dispose of the matter according to law at any rate not later than 3 months from today.

Rule is made absolute accordingly with no order as to costs.

F. I. REBELLO,J.

N. A.BRITTO,J.

SMA